

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7240

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TERRENCE DARNELL SUMUEL,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (CR-02-509)

Submitted: November 18, 2004

Decided: November 30, 2004

Before LUTTIG and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Terrence Darnell Sumuel, Appellant Pro Se. Sonya LaGene Sacks, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Terrence Darnell Sumuel appeals the district court's denial of his motion for departure under 18 U.S.C.A. § 3553(b) (West 2000 & Supp. 2004), U.S. Sentencing Guidelines Manual 5K1.1, and Fed. R. Crim. P. 35(b). The district court properly concluded that, pursuant to the plea agreement and under Rule 35(b), the decision to move for reduction of sentence is solely in the discretion of the Government. The district court was without authority to compel such a motion unless the Government's failure to file resulted from an unconstitutional motive or was not rationally related to a legitimate government goal. United States v. Butler, 272 F.3d 683, 686 (4th Cir. 2001). Therefore, we affirm the decision of the district court denying Sumuel's motion. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED